

No. 15879

United States
Court of Appeals
for the Ninth Circuit

UNION OIL COMPANY OF CALIFORNIA, a
Corporation,

Appellant,

vs.

IDALENE J. CARDINALE, and FRANCES E.
CARDINALE, Administratrixes of the Estate
of FRANK J. CARDINALE, Deceased,

Appellees.

Transcript of Record
(In Three Volumes)

Volume I
(Pages 1 to 36)

FILED

MAY - 2 1958

PAUL P. O'BRIEN; CLERK

Appeal from the United States District Court for the
Northern District of California,
Southern Division.

No. 15879

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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Flood Building,
870 Market St.,
San Francisco, Calif.;

MORGAN AND BEAUZEY,

28 North First St.,
San Jose 13, California,

Proctors for Libelant & Appellee.

FREDERIC G. NAVE,

BOYD & TAYLOR,

350 Sansome St.,
San Francisco, California,

Proctors for Respondent & Appellant.

In the District Court of the United States, in and
for the Southern Division of the Northern Dis-
trict of California

In Admiralty No. 27364

IDALENE J. CARDINALE and FRANCES E.
CARDINALE, Administratrix of the Estate of
FRANK J. CARDINALE, Deceased,

Libelants,

vs.

UNION OIL COMPANY OF CALIFORNIA, a
Corporation; BLACK COMPANY, a Corpora-
tion; WHITE COMPANY, a Co-partnership;
FIRST DOE and SECOND DOE,

Respondents.

LIBEL

In Personam for Damages for Loss of Vessel
(\$75,000.00)

To the Honorable Judges of the Above-Entitled
Court:

The libel of Idalene J. Cardinale and Frances E.
Cardinale, Administratrix of the Estate of Frank
J. Cardinale, Deceased, in a cause of libel, civil
and maritime, for damages for the loss of the
D/F/V "Santa Lucia," alleges as follows:

I.

This Court has jurisdiction of this cause pursuant
to the provisions of 46 U.S.C. 740.

II.

That Respondent Union Oil Company is now, and at all times herein mentioned was, a corporation duly organized and existing under and by virtue of the laws of the State of California.

III.

That at all times herein mentioned Respondents First Doe and Second Doe were the agents and employees of Respondent Union Oil Company and were engaged in the course and scope of said agency and employment.

IV.

That the true names of Respondents First Doe, Second Doe, Black Company, a corporation, and White Company, a copartnership, are unknown to libelants, who therefore sue said respondents by said fictitious names, and pray leave of Court to amend this libel to show the true names and capacities of said respondents when these have been ascertained.

V.

Libelant Idalene J. Cardinale is and was at the times hereinafter mentioned a one-half owner of the Diesel Fishing Vessel "Santa Lucia," official registry No. 236703.

VI.

Frank J. Cardinale, also known as Frank Joseph Cardinale, was the owner of the other one-half interest in the D/F/V "Santa Lucia" until the time of his death, September 28, 1954, which occurred

in an explosion aboard said vessel as hereinafter described.

VII.

Libelant Frances E. Cardinale, widow of Frank J. Cardinale, was appointed and duly qualified as Administratrix of the Estate of Frank J. Cardinale, also known as Frank Joseph Cardinale, Deceased, on November 2, 1954, in probate proceeding No. 13407 in the Superior Court of Monterey County, California.

VIII.

The D/F/V "Santa Lucia" was a wooden purse seiner 72.8 feet in length, 20.5 feet in breadth, 9.6 feet in depth, gross tonnage 109, net tonnage 69, and was at the times hereinafter mentioned used for commercial fishing purposes in the waters of the Pacific Ocean.

IX.

Said D/F/V "Santa Lucia" was at all times herein mentioned, in all respects seaworthy and properly and efficiently officered, manned, supplied, equipped and furnished and well and sufficiently fitted and supplied with suitable engines, machinery, tackle, apparel, appliances and furniture, all in good order and condition and suitable for the purpose, voyage and trade in which she was engaged. The owners of said vessel had, at the commencement of the voyage of said vessel hereinafter mentioned, and at all times prior thereto and at all times thereafter herein mentioned, exercised due

diligence to make said vessel in all respects seaworthy and properly and efficiently officered; manned, supplied, equipped and furnished and well and sufficiently fitted and supplied with suitable engines, machinery, tackle, apparel, appliances and furniture.

X.

The D/F/V "Santa Lucia," or what remains of her, now lies in twenty feet of water approximately three-quarters of a mile from shore near Avila, California, and has been abandoned, and has become a total loss and of no value.

XI.

That on or about September 28, 1954, at Avila, California, respondents negligently maintained, inspected, operated and controlled the gas fueling equipment and dock there located, said dock according to libelants' information and belief being known as the Union Oil Company dock at Avila, California; negligently fueled, and supervised the fueling of the "Santa Lucia," of which vessel said Frank J. Cardinale was part owner and engineer, while said vessel was moored to said dock; negligently failed to observe, watch and control the quantity of gasoline pumped aboard said vessel from the Union Oil Company gasoline pump located on said dock; negligently and carelessly permitted more gasoline to be pumped aboard said vessel than was ordered or the vessel's gasoline tank would hold; negligently permitted the "Santa Lucia" to dock and be moored

in an area where a dangerous accumulation of vapors and gaseous fuel existed; and negligently and carelessly failed to warn the crew or master of the "Santa Lucia" of said accumulation.

XII.

That solely as a direct and proximate result of the foregoing negligence of respondents, an explosion occurred which destroyed the D/F/V "Santa Lucia," and caused its entire loss.

XIII.

That said D/F/V at the time of said explosion had a reasonable market value of \$75,000.00.

XIV.

That as a direct and proximate result of the foregoing negligence and carelessness of respondents, libelants have been damaged in the sum of \$75,000.00.

XV.

All and singular, the premises are true and within the admiralty and maritime jurisdiction of this honorable Court.

Wherefore, libelants pray that citations in due form of law may issue against the respondents herein, citing them to appear and answer in the premises; that this Court decree the payment by said respondents to the libelants of the sum of \$75,000.00, together with interest and costs; and

that libelants may have such other and further relief as may be just.

/s/ MORTON L. SILVERS,
MORGAN & BEAUZEY,
Proctors for Libelants.

[Endorsed]: Filed July 23, 1956.

[Title of District Court and Cause.]

No. 27364

MOTION TO DISMISS AND
EXCEPTIONS TO LIBEL

Comes now Respondent Union Oil Company of California, a corporation, and excepts to the libel herein and moves for the dismissal of libelants' filed herein, and bases its motion and exceptions on the following matters:

I.

That on or about April 4, 1955, one of the libelants herein, Frances Cardinale, did file a Libel In Personam, No. 27098 in the above-entitled Court in which Libel the same or substantially the same allegations of negligence were set forth as against this respondent, Union Oil Company of California, a corporation.

That in said Libel No. 27098 in Paragraph VIII thereof the following allegations appear:

“That on or about September 28, 1954, at Avila, California, respondents negligently maintained, inspected, operated and controlled the gas fueling equipment and dock there located, said dock according to libelants’ information and belief being known as the Union Oil Company dock at Avila, California; negligently fueled, and supervised the fueling of the Santa Lucia, of which vessel said Frank Cardinale was part owner and engineer, while said vessel was moored to said dock; negligently failed to observe, watch and control the quantity of gasoline pumped aboard said vessel from the Union Oil Company gasoline pump located on said dock; negligently permitted the Santa Lucia to dock and be moored in an area where a dangerous accumulation of vapors and gaseous fuel existed; and negligently and carelessly failed to warn the crew or master of the Santa Lucia of said accumulation.”

II.

That on or about July 23, 1956, the said Frances E. Cardinale, Administratrix of the Estate of Frank J. Cardinale, Deceased, joined with Idalene J. Cardinale in the filing of the Libel In Personam for Damages for Loss of Vessel in Action No. 27364 as against respondent, Union Oil Company, a corporation. That Paragraph XI of said Libel charges the said respondent with negligence in the same or sub-

stantially the same language as in Paragraph VIII of said Libel No. 27098.

III.

That the Proctors for Libelants, Morton L. Silvers, and Morgan and Beauzay, were the same Proctors in both of said Libels.

IV.

That the Libel No. 27364 was not filed until almost twenty-two months after the explosion which resulted in the destruction of the F/V "Santa Lucia," although Libelants both allegedly owned an undivided one-half interest in said vessel on September 28, 1954, when an explosion occurred causing the death of Frank J. Cardinale.

V.

That the action of Frances Cardinale, as widow and as guardian of the children of the said Frank Cardinale, No. 27098, was tried before the Honorable Michael J. Roche, Chief Judge of the above-entitled Court, commencing on November 30, 1955, and was terminated upon a complete trial by a Judgment of this Court finding in favor of the Respondent, Union Oil Company of California, a corporation, and against the Libelants, Frances Cardinale, individually and as guardian ad litem in said Action No. 27098.

VI.

That certain Findings of Fact and Conclusions of Law were made by the said Honorable Michael

J. Roche, that said Findings of Fact and Conclusions of Law were as follows:

“Boyd & Taylor,
“Attorneys at Law,
“350 Sansome Street,
“San Francisco, California.
“DOuglas 2-1076.

“In the United States Court for the Northern District of California, Southern Division

“No. 27098

“FRANCES CARDINALE, et al.,

“Libelants,

“vs.

“UNION OIL COMPANY OF CALIFORNIA, a
Corporation, et al.,

“Respondents.

“FINDINGS OF FACT AND CONCLUSIONS
OF LAW

“The above-entitled cause coming on for trial on the 30th day of November, 1955, before the Honorable Michael J. Roche, Chief Judge, United States District Court, sitting without a jury; Morton L. Silvers, and Robert Morgan of Morgan and Beauzay, appearing as proctors for Libelants, Frances Cardinale, et al., and M. K. Taylor and Frederic G. Nave, of Boyd & Taylor, appearing as proctors for Respondent Union Oil Company of California,

a corporation; and the court having heard the testimony and having examined the proofs offered by the respective parties, and the cause having been submitted to the court for decision and the court being fully advised in the premises now makes its findings of fact as follows:

“Findings of Fact

“1. On September 28, 1954, shortly before 5:30 o'clock, p.m., the fishing boat, Santa Lucia, came into the Union Oil Dock at Avila, California, in order to take aboard gasoline.

“2. That as the fishing boat, Santa Lucia, came into the Union Oil Dock, the tanker, “Lompoc,” which was standing at least two hundred, to two hundred fifty feet away, was finishing the loading of almost one and one-half million gallons of Orcutt enriched crude oil, which it had been loading for some six and one-half hours before the appearance of the Santa Lucia. This fuel, Orcutt, is highly volatile containing approximately seventeen per cent natural gasoline.

“3. The dock attendant, an employee of the respondent, Union Oil Company, passed a gasoline hose down to the fishing boat, Santa Lucia, which was standing approximately fifteen feet below the dock, and opened the valves at the meter allowing gasoline to flow into the gasoline lines. As decedent took the hose, the dock attendant asked him approximately how much gasoline he would need. Decedent replied about thirty (30) gallons. Decedent then

placed the nozzle into the fill opening of the gasoline tank, which opening was flush with the deck, and commenced fueling operations. The nozzle of the gasoline hose was a spring lever type and so constructed that to permit the flow of gasoline through the nozzle a lever was opened by manual pressure and to stop the flow the lever was merely released.

“4. That the gasoline tank aboard the fishing boat, Santa Lucia, was located under the deck, held there by hangars, and could only be seen by someone below deck. That decedent had complete control, once the hose was passed to him, of the flow of gasoline into the tank. As there was a shutoff at the end of the hose, decedent could have stopped the flow of gasoline at any time.

“5. There was a meter which measured the flow of gasoline, which stood approximately twenty-six inches high above the floor of the dock, and was located six feet back from the edge of the dock, where it could not be seen by decedent in the boat, located as it was, below the dock. A meter reading taken some time later indicated that fifty-eight gallons of gasoline had been delivered out of the storage tanks on the dock.

“6. The fishing vessel's gasoline tank had a maximum capacity of about forty gallons. No gasoline spilled on the deck of the fishing boat, Santa Lucia, showing that decedent had not allowed the tank to overfill.

“7. Approximately one and one-half hours before the Santa Lucia commenced fueling an inspection of the boat for insurance purposes had been made by a Captain Hansen, an experienced marine surveyor. It was his opinion that at the time of his inspection the fishing boat was seaworthy and that its gas tank was in sound condition. That on a prior inspection, approximately one year before the accident, Captain Hansen, found and reported the fishing boat to be in poor housekeeping, the wiring in poor condition and the boat to be generally filthy and dirty. The same general conditions were found to exist when Captain Hansen again inspected the boat on or about the 10th day of September, 1954, or within a few weeks prior to the accident. At no time did Captain Hansen make any examinations of the gas tank other than running his hand over the top of the tank and feeling the valves. He did not know of what material the tank was made, nor its capacity, and he did not run any pressure test on the tank.

“8. That gasoline vapors accumulated in the hold of the fishing boat resulting in a tremendous underwater explosion aboard the fishing boat. That the explosion and fire resulted from a defective condition of the gasoline tank of the fishing boat Santa Lucia.

“9. That there was no casual relationship between the fueling of the tanker “Lompoc” and the explosion and fire aboard the fishing boat, Santa

Lucia, or the following fire on the marine service dock.

“10. That the fueling equipment on the dock was not defective. Nor was there any defect in the gasoline storage tank on the dock or the lines that run from the tank to the meter. The gasoline storage tank itself was not ruptured or blown up, and the gasoline that was in the storage tank itself was salvaged and used later. All of the pipes and connections running from the gasoline storage tank to the meter were determined to be sound.

“From the foregoing facts the court concludes as follows:

“Conclusions of Law

“1. Libelants have failed to produce sufficient evidence against the respondents that they were responsible for the explosion and fire resulting in the death of decedent.

“2. That Libelants have failed to produce any evidence showing any casual relationship between the fueling of the tanker “Lompoc” and the explosion and fire aboard the fishing boat Santa Lucia.

“3. That from the evidence in this case the inferences of negligence is such that the court finds as a matter of law that the explosion and fire resulted from a defective condition of the gasoline tank aboard the fishing boat Santa Lucia.

“4. That Libelants have failed to sustain the burden of proof that the death of decedent was due

to any negligence or omission on the part of the respondents.

“5. That Libelants have not proven the allegations of their Libel or their several theories set forth therein.

“6. That Libelants are not entitled to recover any damages from the respondents herein upon their Libel filed herein.

“7. That judgment be entered herein, upon these findings of fact and conclusions of law for the respondent.

“8. That each party pay their own costs in this action incurred.

“Dated: This 30th day of January, 1956.

“MICHAEL J. ROCHE,

“Chief Judge, United States
District Court.”

VII.

That said Findings of Fact and Conclusions of Law constitute res judicata on all matters set forth therein as appertaining to the cause of the explosion and destruction of the said F/V “Santa Lucia” as against both Libelants in Action No. 27364 and/or against Frances E. Cardinale, Administratrix of the Estate of Frank J. Cardinale, deceased, and/or Idalene J. Cardinale.

VIII.

That said judgment and Findings in said action No. 27098 are conclusive on the matters of alleged

negligence set forth in Paragraph XI of Action No. 27364 and do constitute an Estoppel as against either or both of the Libelants herein.

IX.

That any action or libel for the destruction of the F/V "Santa Lucia" and the property damages arising therefrom could have been the subject matter of and joined or filed with Action No. 27098.

X.

That the Libelant, Idalene J. Cardinale, is in privity with her sister-in-law, Frances Cardinale, and was at all times conversant with and had knowledge of the filing of action No. 27098, and is in fact a respondent in the divers other actions filed by various crew members of the F/V "Santa Lucia" against Union Oil Company, Frances E. Cardinale, Administratrix of the Estate of Frank Cardinale, in the above-entitled Court in Actions Nos. 27156, 27157, 27158, 27159, 27117, 27119, 27121, 27123, and 27125, and as a result of such knowledge is guilty of laches prejudicing the rights of and causing needless expense to the respondent, Union Oil Company, in defending this action and needless consumption of the judicial processes of this Honorable Court.

XI.

That it is inequitable to permit a retrial and re-litigation of the facts and circumstances concerning the destruction of the F/V "Santa Lucia" in an action filed for that purpose after all pertinent facts

and circumstances have heretofore been tried, litigated and determined adversely to the contentions now raised in Action No. 27098, and that said Libelants are estopped from filing or trying their said Libel in law and by equity.

Wherefore, respondent prays that the Libel be dismissed.

BOYD & TAYLOR,

By /s/ FREDERIC G. NAVE,
Proctors for Respondent
Union Oil Company.

Memorandum of Points and Authorities

The Kermit,

(CC9) 76 Fed. 2d 363;

California Casualty Indem. Exch. v. U. S.,

(DC Cal.) 74 F Supp. 408;

Lorraine v. Coastwise Lines,

(DC Cal.) 86 F Supp. 336;

Smith v. Sheffey,

113 C. A. 2d 741;

The Verna,

(DC N.Y.) 27 Fed. Supp. 679;

The William F. McRae,

(DC Mich.) 23 Fed. 557;

Kelliker v. Stone & Webster,

(CC Fla.) 75 Fed. 2nd 331;

Chicago Cemetery Assn. v. U.S.,
(DC Ill.) 19 Fed. Supp. 228;

U.S. v. Kusche,
(DC Cal.) 56 Fed. Supp. 201;

Runyan v. Great Lakes Dredge & Dock Co.,
(CC Iowa) 141 Fed. 2d 396;

Fulsom v. Quaker Oil & Gas Co.,
(CC Okla) 35 Fed. 2d 84;

Goodno v. Kotchkiss,
(DC Conn.) 237 Fed. 686;

Phoenix Mutual Life Ins. Co. v. Riley,
(DC Pa.) 75 Fed. Supp. 886;

Western Pacific R. Corp. v. Western Pacific
Ry. Co., (CC 9) 216 Fed. 2d 513;

MacDonnell v. Capital Co.,
(CC 9) 13 Fed. 2d 311.

State of California,
City and County of San Francisco—ss.

Frederic G. Nave, being first duly sworn, deposes
and says:

That he is one of the attorneys for the Respond-
ent Union Oil Company, a corporation, in the above-
entitled action; that he has read the foregoing Mo-
tion to Dismiss and Exceptions to Libel and knows
the contents thereof; that the same is true of his
own knowledge except as to matters therein stated

on information and belief and as to those matters that he believes it to be true.

/s/ FREDERIC G. NAVE.

Subscribed and sworn to before me this 31st day of October, 1956.

[Seal] /s/ VIRGINIA R. HAMILTON,
Notary Public in and for the City and County of
San Francisco, State of California.

My Commission Expires May 2, 1960.

[Endorsed]: Filed Nov. 2, 1956.

Affidavit of Service by Mail attached.

[Title of District Court and Cause.]

No. 27364

Order Denying Motion to Dismiss and Overruling
Exceptions to Libel

This matter having been argued, briefed and submitted for ruling,

It Is Ordered that the motion to dismiss be, and the same hereby is, Denied, and the exceptions to the libel be, and the same hereby are, Overruled.

Dated: December 20, 1956.

/s/ GEORGE B. HARRIS,
United States District Judge.

[Title of District Court and Cause.]

No. 27364

ANSWER TO LIBEL

Comes now the Respondent Union Oil Company of California, a corporation, and answering Libelants' Libel on file herein, admits, denies and alleges as follows:

I.

Answering Paragraphs V, VI VII, VIII, X and XIII said respondent alleges that it has no information or belief upon the subject sufficient to enable it to answer the allegations therein contained and placing its denial on that ground, denies each and every, all and singular, the allegations therein contained and each and every part thereof.

Denies that libelants, Idalene J. Cardinale and Frances E. Cardinale, have been damaged in the sum of \$75,000.00 or any other sum or sums whatsoever or at all.

II.

Answering Paragraphs IX, XI, XIV and XV, denies each and every, all and singular, the allegations therein contained and each and every part thereof.

Denies that libelants, Idalene J. Cardinale and Frances E. Cardinale, have been damaged in the sum of \$75,000.00 or any other sum or sums whatsoever or at all.

Further answering said Libel and as and for a separate and distinct defense thereto and plea of contributory negligence, said respondent alleges that libelants, Idalene J. Cardinale and Frances E. Cardinale, were negligent and careless in and about the matters set forth in said Libel in the following manner, to wit: That at said time and place libelants, Idalene J. Cardinale and Frances E. Cardinale, failed to use due or any care or caution for the protection of their own property; that said acts of carelessness and negligence on their part proximately caused or contributed to the damage sustained, if any there was.

Wherefore, said respondent prays that libelants take nothing by their action and that said respondent be dismissed with its costs herein incurred.

BOYD & TAYLOR,
FREDERIC G. NAVE;

By /s/ FREDERIC G. NAVE,
Attorneys for Respondent, Union Oil Company of
California, a Corporation.

[Endorsed]: Filed Dec. 31, 1956.

[Title of District Court and Cause.]

MINUTE ORDER RE CONSOLIDATION
OF CASES

Present: The Honorable Louis E. Goodman,
District Judge.

27116—Salmeri vs. Cardinale;

- 27117—Salmeri vs. Union Oil Co. of Calif.;
- 27118—Pedrasaz vs. Cardinale;
- 27119—Pedrasaz vs. Union Oil Co. of Calif.;
- 27120—Tarantino vs. Cardinale;
- 27121—Tarantino vs. Union Oil Co. of Calif.;
- 27122—Belleci vs. Cardinale;
- 27123—Belleci vs. Union Oil Co. of Calif.;
- 27124—Belleci vs. Cardinale;
- 27125—Belleci vs. Union Oil Co. of Calif.;
- 27156—J. Romeo vs. Union Oil Co. of Calif.
- 27157—S. Romeo vs. Union Oil Co. of Calif.;
- 27158—Cardinale vs. Union Oil Co. of Calif.;
- 27159—Odagio vs. Union Oil Co. of Calif.

The above-entitled cases came on regularly this day to be set for trial. On motion of John Whelan, Esq., Ordered all of these cases and case No. 27364—Cardinale vs. Union Oil Company—be consolidated and trial set for August 26, 1957.

FINDINGS OF FACTS, CONCLUSIONS OF LAW AND DECISION OF THE COURT

Reporters Transcript—Sept. 12, 1957

[See Volume I, Pages 17 to 43, Case No. 15875,
Joseph Salmeri vs. Union Oil Co., etc.]

In the District Court of the United States in and
for the Southern Division of the Northern Dis-
trict of California

In Admiralty—No. 27364

FRANCES E. CARDINALE, Administratrix of
the Estate of FRANK JOSEPH CARDI-
NALE, etc., Deceased, and IDALINE JEN-
NER CARDINALE,

Libelants,

vs.

UNION OIL COMPANY OF CALIFORNIA, a
Corporation,

Respondent.

INTERLOCUTORY DECREE

The above-entitled cause, having come on for trial regularly to be heard on the 3rd, 4th, 5th, 6th, 9th, 10th, 11th and 12th days of September, 1957, and the Court having considered the evidence both oral and documentary, and having been argued and submitted by the proctors for the respective parties and the cause having been submitted and the Court having made and entered its Findings of Fact and Conclusions of Law holding both libelants and respondent to blame, and directing a decree accordingly,

Now, on motion of Morton L. Silvers, proctor for the libelants,

It Is Ordered, Adjudged and Decreed that the opinion of this Court heretofore rendered on the 12th day of September, 1957, be and is hereby adopted as the Court's Findings of Fact and Conclusions of Law, and

It Is Further Ordered, Adjudged and Decreed that the Libelants Frances E. Cardinale, Administratrix of the Estate of Frank Joseph Cardinale, Etc., Deceased, and Idaline Jenner Cardinale as owners of the fishing boat "Santa Lucia" recover of and from Respondent Union Oil Company of California, a corporation, one-half of the damages arising out of the matter set forth in the libel herein, with costs of reference hereunder, and

It Is Further Ordered, Adjudged and Decreed that this matter be referred to Joseph Karesh, United States Commissioner, as commissioner to ascertain and compute the amount of the libelants' damages and to report thereon to this Court with all convenient speed, and

It Is Further Ordered, Adjudged and Decreed that Joseph Karesh as commissioner set down a time and place for a hearing to ascertain and compute the amount of libelants' damages.

Dated: This 17th day of October, 1957.

/s/ SYLVESTER J. RYAN,

Judge of the United States
District Court.

Approved as to Form and receipt of a copy of the above and foregoing Interlocutory Decree is hereby acknowledged this 15th day of October, 1957.

BOYD & TAYLOR,

By /s/ FREDERIC G. NAVE,
Proctors for Union Oil Company of California, a
Corporation.

[Endorsed]: Filed Oct. 21, 1957.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Union Oil Company of California, a corporation, respondent above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on October 21, 1957.

Dated: November 6th, 1957.

FREDERIC G. NAVE,
BOYD & TAYLOR;

By /s/ FREDERIC G. NAVE,
Attorneys for Appellant, Union Oil Company of
California, a Corporation.

Receipts of copies acknowledged.

[Endorsed]: Filed Nov. 7, 1957.

[Title of District Court and Cause.]

No. 27364

STIPULATION EXTENDING TIME TO FILE
RECORD AND DOCKET APPEAL

It Is Hereby Stipulated and Agreed, by and between the attorneys for the parties hereto, subject to the order of the court, that the time within which respondent-appellant shall file the record on appeal and docket the appeal from judgment entered herein on October 11, 1957, in the United States Court of Appeals for the Ninth Circuit be extended to and including January 13, 1958.

Dated: December 12, 1957.

/s/ MORTON L. SILVERS,

Attorney for Libelants Idalene J. Cardinale, and
Frances E. Cardinale, Administratrix of the
Estate of Frank J. Cardinale, Deceased.

FREDERIC G. NAVE,
BOYD & TAYLOR,

By /s/ FREDERIC G. NAVE,

Attorneys for Respondents Union Oil Company of
California, a Corporation.

So Ordered: December 17, 1957.

/s/ GEO. B. HARRIS,

United States District Judge.

[Endorsed]: Filed Dec. 17, 1957.

[Title of District Court and Cause.]

No. 27,364

AFFIDAVIT OF FREDERIC G. NAVE

State of California,

City and County of San Francisco—ss.

Frederic G. Nave, being first duly sworn, deposes and says:

That he is an attorney and proctor of law duly licensed and admitted in the above-entitled court and is the proctor attorney for the appellant, Union Oil Company of California, a corporation, and makes this affidavit for and on behalf of said appellant, Union Oil Company of California, a corporation; that heretofore on December 12, 1957, pursuant to stipulation and order of this Court the time within which the appellant, Union Oil Company of California, a corporation, should file its record on appeal and docket the appeal from the judgment entered herein on October 11, 1957, in the United States Court of Appeals for the Ninth Circuit was extended to and including January 13, 1958; that affiant has consulted with the reporters who are preparing the record and transcripts and has been advised that due to the press of work that the record and transcript is not yet completed and have requested an extension of time of thirty (30) days for such purposes; that affiant did communicate with attorney Morton L. Silvers of San Francisco, who is the proctor and attorney for the Libelant, Ap-

pellee, and did request the written stipulation consenting to such extension and was advised that he would not grant a stipulation in writing.

/s/ FREDERIC G. NAVE.

Subscribed and sworn to before me this 13th day of January, 1958.

[Seal] /s/ WM. J. FLINN,
Deputy Clerk U. S. District Court, Northern District of California.

[Endorsed]: Filed Jan. 13, 1958.

[Title of District Court and Cause.]

No. 27,364

ORDER EXTENDING TIME

Upon reading the Affidavit of Frederic G. Nave, Proctor for Respondent and Appellant, Union Oil Company of California, a corporation, and for good cause appearing;

It Is Hereby Ordered that the time within which the Respondent, Appellant, Union Oil Company of California, a corporation, shall file the record on appeal and docket the appeal from the judgment entered herein on October 11, 1957, in the United States Court of Appeals for the Ninth Circuit be extended to and including February 12, 1958.

In the United States Court of Appeals
for the Ninth Circuit

No. 15879

IDALENE J. CARDINALE, and FRANCES E.
CARDINALE, Administratrix of the Estate of
FRANK J. CARDINALE, Deceased,

Libelants and Appellees,

vs.

UNION OIL COMPANY OF CALIFORNIA, a
Corporation, et al.,

Respondents and Appellants.

DESIGNATION OF THE CONTENTS
OF RECORD ON APPEAL

Appellant, Union Oil Company of California, a corporation, designates the entire record pursuant to Rule 17(6) of the United States Court of Appeals for the Ninth Circuit, including the Reporter's transcript and all exhibits.

Dated: February 6, 1958.

FREDERIC G. NAVE,
BOYD & TAYLOR,

By /s/ FREDERIC G. NAVE,
Proctors for Appellant, Union Oil Company of California, a Corporation.

[Endorsed]: Filed Feb. 5, 1958.

[Title of Court of Appeals and Cause.]

No. 15879

APPELLANT'S STATEMENT OF
POINTS ON APPEAL

Appellant, Union Oil Company of California, a corporation, hereby submits its concise statement of points upon which appellant intends to rely in this appeal as follows:

1. The Court erred in finding that the fire, explosion and destruction of the F/V fishing vessel, Santa Lucia, were caused or occasioned by negligence of appellant.

2. The Court erred in finding that the loss of the F/V Santa Lucia did constitute a maritime tort.

3. The Court erred in not finding that the sole cause of the explosion, fire and destruction of the F/V Santa Lucia was due to the unseaworthiness of said F/V Santa Lucia and to the personal and active negligence of Frank J. Cardinale, one of the co-owners of said F/V Santa Lucia.

4. The Court erred in finding that Charles Caldwell, the Marine service station employee of appellant, was guilty of negligence contributing to the explosion and fire aboard the F/V Santa Lucia.

5. The Court erred in finding that the appellant, Union Oil Company of California, a corporation, was guilty of negligence contributing to the fire, explosion and destruction of the F/V Santa Lucia.

6. The Court erred in failing to find that the appellant, Union Oil Company of California, a corporation, was not negligent in any manner contributing to the explosion, fire and destruction of the F/V Santa Lucia.

7. The Court erred in making findings of fact that Charles Caldwell, an employee of appellant, Union Oil Company of California, a corporation, was negligent and at fault when he failed to look at the gasoline meter until 58½ gallons had been delivered to the F/V Santa Lucia.

8. The Court erred in its finding of fact that the failure of the said Charles Caldwell, an employee of Union Oil Company of California, a corporation, to look at the gasoline meter until 58½ gallons had been delivered was negligence contributing to or causing the explosion and fire aboard the F/V Santa Lucia and the resulting total destruction thereof.

9. The Court erred in making and entering the findings of fact that the appellant, Union Oil Company of California, a corporation, was negligent and at fault in not exercising reasonable care or prudence and that its failure so to do was the proximate cause of the explosion, fire and destruction of the F/V Santa Lucia.

10. The Court erred in that the findings of fact heretofore mentioned are not supported by any evidence in the trial of said action.

11. The Court erred in that there was no evidence to support its findings of negligence against the said

Charles Caldwell or this appellant theretofore specifically mentioned.

12. The Court erred in adopting conclusions of law inconsistent with his findings of fact.

13. The Court properly concluded that the explosion, fire and destruction aboard and to the F/V. Santa Lucia was due to an unseaworthiness aboard the Santa Lucia and to the personal and active negligence of Frank J. Cardinale, one of the co-owners of the ship, but the conclusions of law holding appellant, Union Oil Company of California, a corporation, to be jointly at fault were not consistent thereon.

14. The Court erred in awarding judgment in favor of libelants against this appellant.

15. The Court erred in overruling the exceptive allegations filed by appellant, which said exceptive allegations set forth the plea of res judicata and equitable estoppel by virtue of a final judgment supported by findings of fact and conclusions of law in action No. 27098, filed and tried in the United States District Court before Honorable Michael J. Roche, Chief Judge.

16. The Court erred in not sustaining the motion to dismiss and exceptions to the libel filed in this action by appellant, Union Oil Company of California, a corporation, which said motion to dismiss and exceptions were based on the findings of fact and conclusions of law entered by the Honorable Michael J. Roche, Chief Judge, United States Dis-

trict Court, in and for the Southern Division of Northern District of California in that certain action entitled "Frances Cardinale, et al., Libelant, vs. Union Oil Company of California, a corporation, et al., Respondents," No. 27098 in that said findings of fact and conclusions of law did constitute *res judicata* and a bar to the prosecution of the action resulting in this appeal.

17. That the Court erred in not adopting the findings of fact and conclusions of law of the said Honorable Michael J. Roche, Chief Judge, United States District Court in said action No. 27098.

Dated: February 6, 1958.

FREDERIC G. NAVE,
BOYD & TAYLOR,

By /s/ FREDERIC G. NAVE,
Proctors for Appellant, Union Oil Company of California, a Corporation.

[Endorsed]: Filed Feb. 5, 1958.